

Biodiversity conservation agreements on Crown land

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Policy Statement

This policy sets out the NSW Department of Planning, Industry and Environment (DPIE) – Crown Lands' approach to applications or proposals to enter into biodiversity conservation agreements under part 5 of the *Biodiversity Conservation Act 2016* - being biodiversity stewardship agreements, conservation agreements and wildlife refuge agreements (BC Agreement).

This policy provides clarity and confidence to stakeholders that high standards of transparency and detailed assessment will be undertaken in the consideration of applications or proposals to enter into BC Agreements.

Scope

This policy applies to Crown land subject to the provisions of the *Crown Land Management Act 2016* (the Act).

This policy must be considered when the department is:

- considering entering into a BC Agreement; and/or
- assessing requests from third parties – including other government entities, lessee of Crown land or Crown land managers– for the consent of the minister responsible for administering the Act to enter into BC Agreements. Noting that Crown land managers and lessees of Crown land can enter into BC Agreements with the consent of the minister responsible for administering the Act.

Requirements

BC Agreements on Crown land will be approved where they genuinely secure conservation and biodiversity outcomes that would not otherwise be achieved and where the use of the land for conservation and biodiversity is in the best interest of the people of New South Wales.

1. Where land is reserved or dedicated

a. BC Agreements will not be appropriate in the following:

- i. Where Crown land is already reserved or dedicated for a purpose that ensures the conservation of biodiversity outcomes and that the land will be conserved into the future, a BC Agreement will not be approved or entered into in relation to that land.
- ii. Reserve and dedication purposes must be reviewed on a case-by-case basis to ascertain as to whether they ensure land is conserved.
- iii. Crown land will be considered to already ensure conservation and biodiversity outcomes and will not be appropriate for BC Agreements where the reserve or dedication purpose requires or includes:
 - environmental protection or protection of any environmental or ecological values
 - conservation
 - catchment areas
 - preservation of nature, habitat, water, flora or fauna
 - regeneration
 - habitat corridors or native animals.

b. BC Agreements may be appropriate in the following:

- i. Where a reserve or dedication does not explicitly require or include conservation or biodiversity outcomes, but has the practical effect that it secures conservation of the land or biodiversity, a BC Agreement will only be appropriate where the agreement:
 - secures *additional* conservation and biodiversity outcomes, over and above any conservation and biodiversity outcomes incidentally secured through the reserve or dedication purpose. This means the BC Agreement must secure actions to protect conservation and biodiversity that would not otherwise be required
 - does not prevent the use of the Crown land for the reserve or dedication purpose.
- ii. Where the reserve or dedication purpose has the practical effect that the land must not be developed or ecosystems and biodiversity on the land are maintained.

Examples could include reserve or dedication purposes relating to, concerning or including Travelling Stock Reserves (TSRs), public recreation, passive recreation, tourism and ecotourism, heritage conservation, coastal protection and community purposes (particularly parks and gardens).

In all these cases, the proponent must demonstrate that the BC Agreement secures additional conservation and biodiversity outcomes when compared to those secured through the reserve or dedication purpose alone. The proponent must also demonstrate that the BC Agreement does not impede the continuing use of the Crown land for the reserve purpose.

This will require a case by case analysis of the Crown land, its reserve or dedication purpose and the proposed terms of the BC Agreement.

c. BC Agreements are more likely to be appropriate in the following circumstances:

- i. Where the reserve purpose supports high intensity uses that are generally not consistent with conservation and biodiversity and where the reserve also supports important biodiversity values.

This may be the case where the reserve or dedication purpose provides for mining, mining and petroleum exploration, commercial or retail uses, development, farming and grazing, sale, lease or licence, certain rural and urban services, but the reserve would also allow for conservation and biodiversity outcomes.

In all of these cases, it may be necessary to add an additional reserve purpose to the land or change the reserve purpose of the land to ensure the BC Agreement is consistent with the reserve purpose.

In all these cases there would be the requirement of demonstrable conservation and biodiversity benefits from entering into a BC Agreement.

2. *Perpetual leases including Western Lands leases*

Where the permitted purpose of a perpetual lease authorises activities that are not consistent with conservation and biodiversity protection, the department will look favourably on requests to enter into BC Agreements. The overriding test will be whether the BC Agreement genuinely secures conservation of land and biodiversity outcomes that would not otherwise be achieved.

3. *Leased and licensed land*

As leases and licences are either for a set term, or are terminable at will by the department, it will generally not be appropriate to enter into BC Agreements over Crown land that is under a lease or licence. This is because:

- a. BC Agreements are generally either perpetual or for longer terms, that often go beyond the term of any lease or licence, and also may be registered on title
- b. at the end of the term, or when the licence is terminated, the land will need to be available for other uses and the department will need to consider at that time what use is in the best interest of the people of NSW, in accordance with the objects of the Act.

4. *Multiple uses of land to be encouraged*

The department notes that it is a principle of Crown land management under the Act that, where appropriate, multiple uses of Crown land are to be encouraged. Therefore the department will

require that BC Agreements support multiple uses to the greatest extent that other uses are compatible with conservation and biodiversity outcomes.

5. *Land claims and native title*

Where land is subject to a claim under the *Aboriginal Land Rights Act 1983*, a BC Agreement will only be appropriate where:

- a. the applicant provides prior written consent of the claimant Aboriginal Land Council and the Local Aboriginal Land Council (if different to the claimant Aboriginal Land Council)
- b. the BC Agreement provides that it terminates immediately on the grant of an Aboriginal land claim
- c. the department, at its discretion, forms the view that the BC Agreement only involves a low impact on the land
- d. in any case, the claimant Aboriginal Land Council has not objected to the department entering into the BC Agreement and the BC Agreement would not affect the department's ability to deliver on responsibilities and obligations under an Aboriginal Land Agreement.

In relation to native title, BC Agreements will only be appropriate where:

- a. permitted by the native title legislation, including the *Native Title Act 1993*
- b. entry into the BC Agreement would not result in a compensation liability for the state
- c. the BC Agreement would not affect the department's ability to deliver on responsibilities and obligations under an Indigenous Land Use Agreement (ILUA)
- d. the BC Agreement would not otherwise affect the native title rights and interests without the prior agreement of the native title holders to those affects
- e. the native title holders have not objected to the department entering into the BC Agreement.

6. *Other considerations*

Regardless of whether a BC Agreement secures conservation or biodiversity outcomes, these outcomes may not be sufficient in and of themselves. The outcomes must be considered in the light of the objects of the Act and must be in the best interest of the people of NSW when compared to other outcomes that could be achieved on the relevant piece of Crown land.

Procedures

A separate document, Procedures – BC Agreements will provide further information to assist departmental staff and the community understand the requirements of this policy and how to apply for the minister's consent to enter into BC Agreements.

These procedures will include consideration of how the BC Agreement impacts on any current reserve purpose and, in many cases, may require notification in the NSW Government Gazette.

Roles and responsibilities

- *The Department:*
 - a. review and brief the minister (or any relevant delegate) responsible for administering the Act in relation to applications to enter into BC Agreements
 - b. investigate the native title implications of any BC Agreement, unless the Applicant is a mining company or other entity that the department at its discretion considers has the capacity and capability to undertake the investigation
 - c. enter into BC Agreements on behalf of the minister responsible for administering the Act in accordance with this policy.
- *Applicants proposing to enter into BC Agreements*
 - a. provide true and accurate advice and information when applying for minister's consent
 - b. provide any necessary consents required by this policy in relation to land claims under the *Aboriginal Land Rights Act 1983*
 - c. respond in accordance with reasonable timelines and requirements set by the department.
- *Parties to BC Agreements:* comply with the terms of the BC Agreement for the life of the BC Agreement.

Safety considerations

Not applicable

Delegations

This policy does not change, remove or add delegation to any officer. Specific delegations exist for the Act and financial delegations also apply, which must be adhered to.

Definitions

- BC Act: the *Biodiversity Conservation Act 2016*.
- BC Agreements: agreements under Part 5 of the BC Act, being biodiversity stewardship agreements, conservation agreements and wildlife refuge agreements.
- Biodiversity Conservation Trust: The body established under the BC Act which oversees the private land conservation program across NSW, including BC Agreements.
- Biodiversity stewardship agreements: agreements under Part 5 of the BC Act that provide for permanent and perpetual protection and management of biodiversity and allow for the creation of biodiversity credits. Biodiversity stewardship agreements are registered on the land title and transfer to subsequent landholders, ensuring that, if the land is sold, the agreement and protections it provides remain in place.
- Conservation agreements: voluntary permanent or time-bound agreements under Part 5 of the BC Act between the BCT and landholders to conserve and manage biodiversity on an area of land. Conservation Agreements are registered on the land title and transfer to subsequent landholders, ensuring that, if the land is sold, the agreement and protections it provides remain in place.
- Indigenous Land Use Agreement: a voluntary agreement between a native title group and others about the use of land and waters.
- Wildlife refuge agreements: voluntary agreements under Part 5 of the BC Act between the BCT and the landholder to protect and manage wildlife habitat on an area of land. Wildlife Refuge Agreements may be recorded on the land title and transfer to subsequent landholders, however the agreement can be revoked by the landholder or the BCT at any time.
- Tenure holder: any lessee or licensee of Crown land.

Legislation

- *Biodiversity Conservation Act 2016*
- *Crown Land Management Act 2016*
- *Aboriginal Land Rights Act 1983*
- *Native Title Act 1993*

Related policies

Not applicable

Superseded documents

Not applicable

Revision history

Version	Date issued	Notes	By
1	05/02/2020	New policy to assist staff, Crown land managers and others regarding consideration of BC Agreements.	A/Deputy Secretary

Review date

05/02/2023

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